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THIS IS NOT A DISCIPLINARY  
ACTION OR FINAL DECISION  
OF THE BOARD

7  
8 **BEFORE THE**  
**CALIFORNIA BOARD OF ACCOUNTANCY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. AC-2011-23

11 **MICHAEL J. BYRD**  
12 14858 Gypsy Hill Road  
Saratoga, CA 95070  
13 **Certified Public Accountant Certificate**  
**No. CPA 46019**

**A C C U S A T I O N**

14 Respondent.

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16  
17 Complainant alleges:

18 **PARTIES**

19 1. Patti Bowers (Complainant) brings this Accusation solely in her official capacity as  
20 the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs.

21 2. On or about October 10, 1986, the California Board of Accountancy issued Certified  
22 Public Accountant Certificate Number CPA 46019 to Michael J. Byrd (Respondent). The  
23 Certified Public Accountant Certificate expired on June 30, 2008, and has not been renewed.

24 **JURISDICTION**

25 3. This Accusation is brought before the California Board of Accountancy (Board),  
26 Department of Consumer Affairs, under the authority of the following laws. All section  
27 references are to the Business and Professions Code unless otherwise indicated.

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1           4.       Section 5100 states:

2           "After notice and hearing the board may revoke, suspend, or refuse to renew any permit or  
3       certificate granted under Article 4 (commencing with Section 5070) and Article 5 (commencing  
4       with Section 5080), or may censure the holder of that permit or certificate for unprofessional  
5       conduct that includes, but is not limited to, one or any combination of the following causes:

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7           "(g) Willful violation of this chapter or any rule or regulation promulgated by the board  
8       under the authority granted under this chapter.

9           "(h) Suspension or revocation of the right to practice before any governmental body or  
10       agency.

11

12           "(l) The imposition of any discipline, penalty, or sanction on a registered public accounting  
13       firm or any associated person of such firm, or both, or on any other holder of a permit, certificate,  
14       license, or other authority to practice in this state, by the Public Company Accounting Oversight  
15       Board or the United States Securities and Exchange Commission, or their designees under the  
16       Sarbanes-Oxley Act of 2002 or other federal legislation."

17           5.       Section 5063 states:

18           "(a) A licensee shall report to the board in writing of the occurrence of any of the following  
19       events . . . within 30 days of the date the licensee has knowledge of these events:

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21           "(3) The cancellation, revocation, or suspension of the right to practice as a certified public  
22       accountant or a public accountant before any governmental body or agency."

23

24           "(c) A licensee shall report to the board in writing, within 30 days of the entry of the  
25       judgment, any judgment entered on or after January 1, 2003, against the licensee in any civil  
26       action alleging any of the following:

27           (1) Dishonesty, fraud, gross negligence, or negligence.

28           (2) Breach of fiduciary responsibility.

1 (3) Preparation, publication, or dissemination of false, fraudulent, or materially misleading  
2 financial statements, reports, or information.

3 (4) Embezzlement, theft, misappropriation of funds or property, or obtaining money,  
4 property, or other valuable consideration by fraudulent means or false pretenses, or other errors or  
5 omissions.

6 (5) Any actionable conduct by the licensee in the practice of public accountancy, the  
7 performance of bookkeeping operations, or other professional practice."

#### 8 COSTS

9 6. Section 5107(a) of the Code states:

10 "The executive officer of the board may request the administrative law judge, as part of the  
11 proposed decision in a disciplinary proceeding, to direct any holder of a permit or certificate  
12 found to have committed a violation or violations of this chapter to pay to the board all reasonable  
13 costs of investigation and prosecution of the case, including, but not limited to, attorneys' fees.  
14 The board shall not recover costs incurred at the administrative hearing."

#### 15 FACTUAL BACKGROUND

16 7. Respondent's license is subject to discipline based upon two separate actions by the  
17 Securities and Exchange Commission ("SEC") and Respondent's failure to report those actions to  
18 the Board.

#### 19 SEC CIVIL CASE

20 8. The first SEC action involved a civil suit filed on about August 17, 2007 in the U.S.  
21 District Court for the Northern District of California, entitled *Securities and Exchange*  
22 *Commission v. Michael J. Byrd*, Civil Action No. C-07-4223 ("Civil Action"). The complaint in  
23 the Civil Action alleged that during his tenure as Chief Financial Officer (CFO) and Chief  
24 Operating Officer (COO) of Brocade Communications Systems, Inc. ("Brocade"), Respondent  
25 received information calling into question the integrity of Brocade's financial statements based on  
26 its options granting process carried out by Brocade's then chief executive officer. Respondent  
27 allegedly received information suggesting that Brocade's then chief executive officer was  
28 backdating options grants to executives and others so that the grantees would receive in-the-

1 money options that appeared to be granted at-the-money.<sup>1</sup> The complaint further alleged that  
2 Respondent was personally involved in falsifying records so that in-the-money options appeared  
3 to be granted at-the-money. Respondent himself was granted backdated options.

4 9. The complaint alleges Brocade issued materially false financial statements included  
5 in its annual and quarterly reports filed on Forms 10-K and 10-Q with the Securities and  
6 Exchange Commission during the company's fiscal years 2001 through 2003. Respondent as  
7 CFO and COO reviewed these statements and made representations that the reports were  
8 accurate. Respondent also reviewed and signed materially misleading statements.

9 10. The Complaint in the Civil Action, alleged Respondent was involved in: fraud;  
10 dishonesty; making false and misleading representations; falsifying or causing to be falsified,  
11 books, records or accounts; providing substantial assistance to the filing of false and misleading  
12 reports.

13 11. On or about January 2, 2010, a final judgment was entered against Respondent. The  
14 judgment enjoined Respondent from violating several sections of the Securities Act of 1933 and  
15 the Securities Exchange Act of 1934. The judgment found Respondent liable for disgorgement  
16 plus interest in the amount of \$249,843. The judgment also ordered Respondent to pay a civil  
17 penalty of \$175,000 pursuant to Section 20(d) of the Securities Act of 1933 and Section 21(d)(3)  
18 of the Securities Exchange Act of 1934, 15 U.S.C. §§ 77t(d) & 78u(d)(3). Payment of  
19 Disgorgement and Civil Penalties would be made to the SEC.

#### 20 SEC ADMINISTRATIVE CASE

21 12. The second SEC proceeding was an administrative proceeding captioned *In the*  
22 *Matter of Michael J. Byrd, CPA*, Securities and Exchange Commission Release No. 61516 /  
23 Accounting and Auditing Enforcement Release No. 3113 / Administrative Proceeding File No. 3-  
24 13781. This matter was resolved on or about February 12, 2010, by the issuance of an order

25 <sup>1</sup> An option is at-the-money if the strike price is the same as the spot price of the underlying  
26 security on which the option is written. An at-the-money option has no intrinsic value, only time  
27 value. An in-the-money option has positive intrinsic value as well as time value. A call option is  
28 in-the-money when the strike price is below the spot price. A put option is in-the-money when the  
strike price is above the spot price.

1 instituting administrative proceedings pursuant to Rule 102(e) of the SEC's Rules of Practice,  
2 making findings, and imposing remedial sanctions against Respondent. The SEC's order  
3 suspended Respondent from appearing or practicing before the SEC as an accountant. The Order  
4 provides that Respondent may request that the Commission consider his reinstatement after three  
5 years from the date of the Order, that is, after February 12, 2013.

6 13. The SEC made findings summarizing the allegations of the Civil Action referenced in  
7 paragraphs 8-11, and imposed a suspension on Respondent based upon its authority to suspend  
8 from appearing or practicing before it any accountant who has been permanently enjoined by any  
9 court of competent jurisdiction, by reason of his misconduct in an action brought by the SEC,  
10 from violating or aiding and abetting the violation of any provision of the Federal securities laws  
11 or of the rules and regulations thereunder, pursuant to Rule 102(e)(3)(i) of the Commission's  
12 Rules of Practice.

13 FIRST CAUSE FOR DISCIPLINE

14 (Discipline by Government Agency)

15 14. Respondent is subject to disciplinary action under section 5100(h) of the code in that  
16 on or about February 12, 2010 a governmental body or agency suspended Respondent's right to  
17 practice before that governmental body or agency. The circumstances are described in  
18 paragraphs 12-13, above.

19 SECOND CAUSE FOR DISCIPLINE

20 (Discipline by SEC)

21 15. Respondent is subject to disciplinary action under section 5100(l) of the code in that  
22 on or about February 12, 2010, in Securities and Exchange Commission Release No. 61516 /  
23 Accounting and Auditing Enforcement Release No. 3113 / Administrative Proceeding File No. 3-  
24 13781, the United States Securities and Exchange Commission suspended Respondent's right to  
25 appear or practice before that body. The circumstances are described in paragraphs 12-13, above.

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1 THIRD CAUSE FOR DISCIPLINE

2 (SEC CIVIL ACTION)

3 16. Respondent is subject to disciplinary action under section 5100(l) of the code in that  
4 on or about on or about January 2, 2010, a final judgment was entered against Respondent  
5 *Securities and Exchange Commission v. Michael J. Byrd*, Civil Action No. C-07-4223. The  
6 judgment also ordered Respondent to pay a civil penalty of \$175,000 to the SEC. The  
7 circumstances are more fully described in paragraphs 8-11, above

8 FOURTH CAUSE FOR DISCIPLINE

9 (Failure to Report Discipline)

10 17. Respondent is subject to disciplinary action under sections 5100(g) and 5063(a)(3) of  
11 the code in that Respondent failed to report his suspension by the United States Securities and  
12 Exchange Commission to the Board within 30 days of the suspension.

13 FIFTH CAUSE FOR DISCIPLINE

14 (Failure to Report Civil Judgment)

15 18. Respondent is subject to disciplinary action under sections 5100(g) and 5063(c) of the  
16 code in that Respondent failed to report the civil judgment described in Paragraphs 8-11, above,  
17 to the Board within 30 days of the judgment.

18 PRAYER

19 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
20 and that following the hearing, the California Board of Accountancy issue a decision:

21 1. Revoking or suspending or otherwise imposing discipline upon Certified Public  
22 Accountant Certificate Number CPA 46019, issued to Michael J. Byrd;

23 2. Ordering Michael J. Byrd to pay the California Board of Accountancy the reasonable  
24 costs of the investigation and enforcement of this case, pursuant to Business and Professions  
25 Code section 5107;

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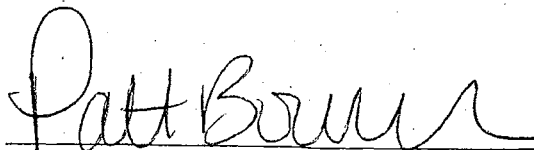
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3. Taking such other and further action as deemed necessary and proper.

DATED:

7/11/2011



PATTI BOWERS  
Executive Officer  
California Board of Accountancy  
Department of Consumer Affairs  
State of California  
*Complainant*

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